UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTIN EDWARD WALTERS, Petitioner, vs. DK SISTO, WARDEN, CSP SOLANO Respondent.	CASE NO. 07CV2236 **ORDER: (1) DISMISSING WITHOUT PREJUDICE PETITION FOR WRIT OF HABEAS CORPUS; (2) DENYING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AS MOOT; AND (3) DENYING MOTION TO APPOINT COUNSEL AS MOOT**

Petitioner, a prisoner proceeding pro se, has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 [Doc. No. 1], together with a motion for leave to proceed in forma pauperis [Doc. No. 2], and a motion to appoint counsel [Doc. No. 3.]

Although Petitioner filed this action pursuant to 28 U.S.C. § 2241, he is a state prisoner attacking the validity of a state court conviction and sentence imposed by the state of California. Therefore, Petitioner may not proceed under Section 2241, but may only proceed with a habeas action in federal court under 28 U.S.C. § 2254. White v. Lambert, 370 F.3d 1002, 1006-07 (9th Cir. 2004) (holding that Section 2254 is the proper jurisdictional basis for a habeas petition brought by an individual "in custody pursuant to a state court judgment"). Section 2254 is properly understood as "in effect implement[ing] the general grant of habeas corpus authority found in § 2241 as long as the person is in custody pursuant to the judgment of a state court, and not in state custody for some other reason, such as pre-conviction custody, custody awaiting extradition, or other forms of custody that are possible without a conviction." [citations omitted.] Id. at 1006 (quoting Walker v. O'Brien, 216 F.3d 626, 633 (7th Cir. 2000) (emphasis in original).

Therefore, this Court **DISMISSES** without prejudice the petition for habeas corpus, **DENIES** the motion for leave to proceed in forma pauperis as moot, and **DENIES** the motion to appoint counsel as moot.

IT IS SO ORDERED.

DATED: November 30, 2007

Janis L. Sammartino

Honorable Janis L. Sammartino
United States District Judge